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October 24, 2005

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OCT 24 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Re: Joint Petition for Waiver of the Definition of
"Study Area" of the Appendix-Glossary of Part 36 of the
Commission's Rules, Petition for Waiver of Sec.
69.3(e)(11) of the Commission's Rules. CC Doc. No.
96-45

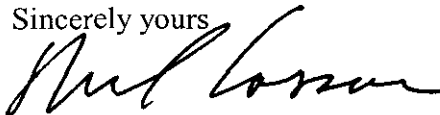
Dear Ms. Dortch:

Attached please find an original and four copies of the Joint Petition for of the Definition of
"Study Area" being filed by Lost Nation-Elwood Telephone Company and Iowa Telecommunications
Services, Inc. The Petition also includes a request by Lost Nation-Elwood for waiver of Section
69.3(e)(11) of the Commission's Rules.

The requisite filing fee and FCC Form 159 Remittance Advice is being submitted by Courier to
Mellon Bank, Pittsburgh, Pennsylvania on this date.

Please acknowledge recieipt on the "stamp and return" duplicate document attached for this
purpose. Please contact me if there are any questions regarding this matter.

Sincerely yours



David Cosson
Counsel to Lost Nation-Elwood Telephone Company

No. of Copies rec'd 0 + 4
List A B C D E

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

OCT 24 2005

In the Matter of)	
)	
Lost Nation-Elwood Telephone)	
Company)	
)	CC Docket No. 96-45
And)	
)	
Iowa Telecommunications Services,)	
Inc. d/b/a Iowa Telecom)	

Federal Communications Commission
Office of Secretary

JOINT PETITION FOR EXPEDITED WAIVER

Pursuant to Section 1.3 of the Commission's Rules, Lost Nation-Elwood Telephone Company ("Lost Nation") and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (collectively, "Petitioners"), by their attorneys, request a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's Rules. Additionally, Lost Nation seeks waiver of Section 69.3(e)(11) of the Commission's Rules concerning participation in the National Exchange Carrier Association ("NECA") carrier common line tariff.

Petitioners request these waivers to enable Lost Nation to complete its purchase of Iowa Telecom's Oxford Junction exchange in Iowa. Petitioners request that the Oxford Junction exchange be added to Lost Nation's existing study area and removed from Iowa Telecom's study area.¹ Petitioners request expeditious review and approval of this Petition.

¹ Iowa Telecom's relevant study area number is 351170.

I INTRODUCTION

Iowa Telecom is a price cap incumbent local exchange carrier (“ILEC”) that owns and operates approximately 246,000 ILEC access lines in 294 exchanges in the state of Iowa, including Oxford Junction. Iowa Telecom has entered into an Asset Purchase Agreement pursuant to which the assets used in operation of the Oxford Junction exchange will be transferred to Lost Nation.² Upon closing of the transaction, Iowa Telecom will continue to provide telephone service in Iowa and will retain its study area for its remaining exchanges.

Lost Nation is a rate of return regulated ILEC that has provided service in Iowa for more than one hundred years. Its incumbent service area comprises the Lost Nation-Elwood exchange, which covers approximately 120 square miles in eastern Iowa. Lost Nation also operates as a competitive local exchange carrier (“CLEC”) in Iowa Telecom’s Oxford exchange, where it currently serves 379 of the approximately 395 access lines entirely over its own facilities. Upon completion of the acquisition, Lost Nation will discontinue CLEC operations in the exchanges and transfer the CLEC subscribers to its ILEC operation.

II WAIVER OF THE STUDY AREA DEFINITION IS WARRANTED

Petitioners seek a waiver of the frozen study area definition. Part 36 of the Commission's Rules “freezes” the definition of “study area” to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier

² An Application for Transfer of Control of the exchange was filed October 21, 2005.

from segregating territories artificially to maximize high-cost support,³ the Commission has recognized that changes “that result from the purchase or sale of exchanges in arms-length transactions” do not necessarily raise the concerns which prompted the freeze.⁴

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.⁵ Such a result would not serve the Commission’s policy objective of ensuring that carriers’ actual costs are reflected in their accounting so that they can accurately set just, reasonable and non-discriminatory rates.⁶ Inasmuch as Lost Nation’s proposed acquisition results from an arm’s length negotiation process with Iowa Telecom, the standards for waiver of the freeze are met in this instance.

A. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount equal to or greater than one percent of the total high-cost support fund for the year.⁷ The proposed transaction will produce no such

³ See *MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board*, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

⁴ See, e.g., *Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of “Study Area” contained in Part 36, Appendix-Glossary of the Commission’s Rules*, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Carr. Bur. 1990).

⁵ *Amendment to Part 36 to the Commission’s Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 (1990) (“*Part 36 NPRM*”).

⁶ Iowa Telecom will adjust, pursuant to 47 C.F.R. § 61.45, its price cap prices to reflect removal of the transferred access lines, as applicable.

⁷ See, e.g., *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission’s Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995) (“*Eagle Order*”).

adverse impact, as Section 54.305 of the Commission's rules provides in pertinent part:

A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.⁸

Notwithstanding Section 54.305(a) of the Commission's Rules, however, Lost Nation may still be eligible to receive additional limited high cost support for the purchased access lines. First, Lost Nation may be eligible for limited "safety valve" support for new investments in the purchased assets.⁹ Second, Lost Nation may be eligible for additional interstate common line support ("ICLS").¹⁰

Nevertheless, it is inconceivable that Lost Nation's additional support could rise to \$40 million—the figure that now approximates an aggregated one percent increase of annual high cost support.¹¹ First, safety valve support, to the extent Lost Nation would be eligible, is capped by rule.¹² Second, Lost Nation currently receives \$178,128 in annual ICLS support. By adding an additional 395 lines to its study area, at the same per line support level, Lost Nation would receive only an additional estimated \$103,490 in annual ICLS.¹³ Accordingly, this transaction is a non-event for purposes of the USF.¹⁴

⁸ 47 C.F.R. §54.305(a).

⁹ See 47 C.F.R. § 54.305(b)-(f).

¹⁰ See 47 C.F.R. § 54.901.

¹¹ USAC's most recent projections show annual high cost support exceeding \$4.0 billion. See USAC, HC01 - High Cost Support Projected by State by Study Area - 4Q2005.xls, online at <http://www.universalservice.org/> ("USAC HC01").

¹² See 47 C.F.R. § 54.305(b)-(f).

¹³ Initially, ICLS for the acquired lines would be available based on the existing per line ICLS of the acquiring company. These amounts would be subject to true up once cost and revenue data are available. Actual amounts received would be dispersed on a monthly basis and are dependent on the timing of the grant of the waiver request, closing of the acquisition, and submission of updated line counts by the acquiring company.

¹⁴ Lost Nation recognizes that as a result of the transaction, access lines in the pre-acquisition study area will be eligible for different amounts of high-cost support than the access lines being acquired from Iowa Telecom. Lost Nation will adopt a methodology for excluding the costs associated with the acquired access lines from the costs associated with the pre-acquisition study area.

B. State Commission Approval.

Petitioners filed a joint Application for Approval of Discontinuance of Service and Transfer of Certificate with the Iowa Utilities Board (“IUB”) on September 7, 2005, in which Lost Nation and Iowa Telecom requested the IUB to state in its final order that it does not object to the grant of this study area waiver. On September 30, 2005, the IUB issued its Order granting the application. The IUB order states: “In previous transfers of this type, the Board has affirmatively stated that it does not object to the FCC granting a study area waiver. The Board finds it is appropriate to make the same statement in this docket.”¹⁵

C. Granting The Waiver Is In The Public Interest.

The transfer of the Oxford Junction exchange from Iowa Telecom to Lost Nation will promote the public interest because it will provide affected customers with new services from a locally-based carrier specializing in meeting the communications needs of the few rural communities it serves. Since 1902 Lost Nation has offered its customers access to local management, local service personnel, and local service centers.

Lost Nation has committed to ensure that any necessary investments are made so that acquired customers receive basic telephone service and Internet access over more modern and reliable facilities. In addition the conversion of subscribers to Lost Nation’s prefix will allow release of the 486 NXX in the 563 NPA currently used by Iowa Telecom to serve such subscribers.¹⁶ At the same time, removal of Oxford Junction from Iowa Telecom’s study area will allow it to focus its upgrading plans in a more efficient

¹⁵ *In re: Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom and Lost Nation-Elwood Telephone Company*, Doc. No. SPU-05-19, Order Approving Joint Application for Discontinuance of Service. Sep. 30, 2005. A copy is attached as Attachment A.

¹⁶ Iowa Telecom currently serves customers in the Oxford Junction exchange using four 1,000-number blocks in the 486 NXX.

manner to the benefit of its other subscribers. Accordingly, the public interest would be better served if these operationally distinct exchanges were separated from the exchanges to be retained by Iowa Telecom and placed in Lost Nation's study area.

III. WAIVER OF SECTION 69.3(e)(11) OF THE COMMISSION'S RULES IS WARRANTED.

Lost Nation also requests a waiver of Section 69.3(e)(11), if necessary, in order to continue to allow it to use NECA as its tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) may preclude Lost Nation from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of the acquisition transaction. This would require Lost Nation to file interstate tariffs, and assume the cost and administrative burden associated with that process for a brief period. Moreover, the inclusion of the small number of acquired access lines in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation.¹⁷

In light of the fact that Lost Nation is a very small carrier and that the administrative and financial burdens that could result in the absence of a waiver are great, Lost Nation requests a waiver of Section 69.3(e)(11) to the extent necessary for it to add the Oxford Junction exchange to its current study area and include the access lines in the NECA pools upon the closing date of this acquisition.¹⁸

¹⁷ See, e.g., *Saddleback Communications and Qwest Corporation*, Order, 16 FCC Rcd 21159, 21166 (Acc. Pol. Div. 2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2700 access lines).


¹⁸ Lost Nation will request NECA to provide a statement for the record that it does not object to the addition of these lines to the pool.

V. CONCLUSION

The immediate requests are generally analogous to comparable requests granted by the Commission for similarly situated carriers. Petitioners have shown, moreover, the substantial public interest benefits that will flow to the subscribers of both Lost Nation and Iowa Telecom. Petitioners respectfully request that this Joint Petition be granted on an expedited basis, thereby allowing the affected customers to benefit from this acquisition as soon as possible.

Respectfully submitted,

Lost Nation Telecommunications, Inc.

By: 
David Cosson

Its Attorney

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2120 L Street, N.W., Suite 520
Washington, DC 20037
(202) 296-8890

Iowa Telecommunications Services, Inc.

By:  (cc)
D. Michael Anderson

Vice President-External Affairs
115 S. Second Avenue West
Newton, Iowa 50208
(641) 787-2357

October 24, 2005

ATTACHMENT A

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

IOWA TELECOMMUNICATIONS
SERVICES, INC., d/b/a IOWA TELECOM,
AND LOST NATION – ELWOOD
TELEPHONE COMPANY

DOCKET NO. SPU-05-19

**ORDER APPROVING JOINT APPLICATION FOR
DISCONTINUANCE OF SERVICE**

(Issued September 30, 2005)

On September 7, 2005, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), and Lost Nation – Elwood Telephone Company (Lost Nation) filed a joint application for discontinuance of service and transfer of certificate pursuant to Iowa Code §§ 476.20 and 476.29. The filing indicates that Lost Nation has acquired from Iowa Telecom the assets to provide local exchange service in the Oxford Junction, Iowa, exchange. The acquisition will result in the discontinuance of service by Iowa Telecom and the continuance of service by Lost Nation. The parties state that both Lost Nation and Iowa Telecom are certificated to provide service in the Oxford Junction exchange and have approved tariffs and exchange boundary maps on file for the provision of service in that exchange.

Iowa Code § 476.20(1) states that a utility shall not discontinue service to a community unless permission is obtained from the Board. The Board's rules at 199 IAC 7.12 address the discontinuance of service incident to utility property transfer. Within 30 days, the Board must either approve an application or docket it

for further investigation; otherwise, it will be deemed approved. The Board may grant an application if the Board finds the transferee is ready, willing, and able to provide comparable utility service.

Based on the information provided, the Board finds that Lost Nation has demonstrated a history of providing local exchange telecommunications service in compliance with the Board's rules and requirements and that it is ready, willing, and able to provide comparable service in the Oxford Junction exchange. The Board finds that the requirements of Iowa Code § 476.20(1) are satisfied and will approve the joint request for discontinuance of service by Iowa Telecom and Lost Nation in the Oxford Junction exchange pursuant to 199 IAC 7.12 and 22.16 and Iowa Code § 476.20(1). Since Lost Nation is already certificated to provide service in the Oxford Junction exchange, there is no need to transfer Iowa Telecom's certificate to Lost Nation. Both Iowa Telecom and Lost Nation will be required to amend their tariffs and maps as necessary to reflect the discontinuance of service within 30 days of this order.

The joint applicants also request a waiver of 199 IAC 22.23(2), to the extent one is necessary. The Board's rule 22.23 requires telecommunications service providers to obtain customer authorization prior to enacting a change in service. The Board recently amended this rule so that the sale or transfer of a utility's customer base would not be considered an unauthorized change in service as long as the utility complies with the notice requirements of 199 IAC 22.23(2)"e." The Board has been provided adequate notice of the change in service and the joint applicants

submitted a copy of the notice that was sent to Iowa Telecom's customers informing them of the change in service. These notices comply with the notice requirements of 199 IAC 22.23(2)"e." Therefore, a waiver of 199 IAC 22.23 is not necessary.

On September 21 and 22, 2005, Lost Nation made two supplemental filings to the joint application to clarify treatment of telephone numbering resources subsequent to the Board's approval of the joint application. Lost Nation states that there will be 16 customers remaining on Iowa Telecom's 486 prefix after the acquisition of Iowa Telecom's customers by Lost Nation. Lost Nation states that those customers will have their telephone numbers changed to Lost Nation's 826 prefix by August 1, 2006. Lost Nation also states that it will then return the 486 prefix to the North American Numbering Plan Administrator to provide an additional NXX to Iowa's inventory of unused central office codes. In addition, Lost Nation states that it will acquire all of Iowa Telecom's obligations in Oxford Junction including becoming capable of providing local number portability and number pooling in the Oxford Junction exchange. The Board approves of Lost Nation's proposed treatment of the 486 prefix and encourages Lost Nation to make the transition as easy for customers as possible.

In connection with the transfer, the joint applicants state they will require a waiver from the Federal Communications Commission (FCC) of the FCC's study area requirements. It has been the FCC's policy not to accept a waiver petition unless the state regulatory agency indicates that it does not object to changes in the study area boundaries. In previous transfers of this type, the Board has affirmatively stated that

it does not object to the FCC granting a study area waiver.¹ The Board finds it is appropriate to make the same statement in this docket.

IT IS THEREFORE ORDERED:

1. The joint application for approval of discontinuance of service with regard to the Oxford Junction, Iowa, exchange filed September 7, 2005, by Iowa Telecommunications Services, inc., d/b/a Iowa Telecom, and Lost Nation – Elwood Telephone Company is approved to be effective upon the issuance of this order.

2. Iowa Telecommunications Services, inc., d/b/a Iowa Telecom, and Lost Nation – Elwood Telephone Company are directed to file revised tariffs and maps as necessary to reflect the discontinuance of service in the Oxford Junction, Iowa, exchange by Iowa Telecom.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 30th day of September, 2005.

¹ See, for example, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, and Norway Rural Telephone Service, "Order Approving Joint Application for Discontinuance of Service and Authorizing Transfer of Certificate," Docket No. SPU-02-2, issued March 12, 2002.

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589

Page 1 of 1

(1) LOCK BOX # 358140		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Lost Nation-Elwood Telephone Company		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$6,840.00	
(4) STREET ADDRESS LINE NO. 1 304 Long Ave.			
(5) STREET ADDRESS LINE NO. 2 P.O. Box 97			
(6) CITY Lost Nation		(7) STATE IA	(8) ZIP CODE 52254
(9) DAYTIME TELEPHONE NUMBER (include area code) 563 678 2470		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0003-7738-27		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME			
(14) STREET ADDRESS LINE NO. 1			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY		(17) STATE	(18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN)		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE BEA	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$6,840.00	(27A) TOTAL FEE \$6,840.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
I, <u>David Cobson</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>[Signature]</u>		DATE <u>10/27/05</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

Invoice No.

SAW

Date

10/20/2005

Invoice Amount

\$6,840.00

Debit Memo Amt

\$0.00


Description

Study Area Waiver

\$6,840.00

Lost Nation
TELEPHONE COMPANY

LOST NATION - ELWOOD TELEPHONE COMPANY

 <p>Lost Nation Elwood TELEPHONE COMPANY P.O. Box 97, Lost Nation, IA 52254</p>		<p>FIRST TRUST & SAVINGS BANK LOST NATION OFFICE - WHEATLAND, IA</p> <p>CHECK NO. 72184 DATE 10/20/2005 AMOUNT \$6,840.00</p> <p>GENERAL FUND LOST NATION - ELWOOD TELEPHONE COMPANY</p> <p><i>[Signature]</i> AUTHORIZED SIGNATURE</p>	
<p>PAY EXACTLY Six Thousand Eight Hundred Forty And 00/100**</p>			
<p>TO THE ORDER OF</p>		<p>Federal Communications Commission 1919 M Street, N.W. Washington DC 20554 0000</p>	